

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION OF THE STATE OF
COLORADO
PREHEARING STATEMENT**

**IN THE MATTER OF CHANGES TO) CAUSE NO. 1R
THE RULES AND REGULATIONS)
OF THE OIL AND GAS) DOCKET NO. 190600531
CONSERVATION COMMISSION OF)
THE STATE OF COLORADO) TYPE: RULEMAKING**

I. PREHEARING STATEMENT OF BE THE CHANGE

We repeat our comments as we have let them be known at every public forum since Mr. Robbins introduced his draft “15 objective criteria.” These “criteria” were apparently designed by Mr Robbins to be a new interim law, of his making, that will substitute for SB 181 until rules can be finalized on the actual law sometime out into the future. His estimate is up to 2 years, perhaps more. We think real rulemaking should not take 2 years, but it is likely to take longer if Mr. Robbins’ “objective criteria” continues to be the agency's guidepost.

As we have said and will continue to say, Mr Robbins has not the authority to draft his own interim law, even if he attempts to disguise the fact by calling it “15 objective criteria.” He is acting illegally. What is more, we see nothing objective about them. They are arbitrary and capricious, in our opinion. This indeed is a sad commentary on implementation of the most important health and public protection law enacted in Colorado in at least the past decade. The ink is hardly dry, yet already the administration seems to be bowing and scraping before the oil interests in a disturbing litany of mea culpas. We hope we are proven wrong.

The apparent purpose of Robbins' law is to allow the Director to approve new drilling permits while he discovers, after the fact, what the impacts on the public and its resources, such as air, land, and water, actually are. Mr. Robbins is being paid by the people to implement SB181 as quickly as possible, not postpone honest implementation under some fanciful notion that his job is still to protect the financial interests of the oil industry. That was the old law. The new law demands that he and his agency protect the public's health, safety, and welfare, as well as protect wildlife and the environment. Delays in approving new drilling permits may result. They almost assuredly will since SB 181 is a sea change. It precludes new drilling permits until analysis and procedures developed through rulemaking are in place to reasonably ensure that the public's interests and their environment are not being sacrificed.

We suggest the quickest way to satisfy the law and thereby make legal the prospect of new drilling is to base rule making on the following hierarchy:

1. Setbacks from homes, schools, and other important public resources

2. Continuous air monitoring at major facilities
3. Cumulative impacts on air, land, and water
4. Leak monitoring of pipelines and underground storage reservoirs
5. Bonding
6. Financial Assurance
7. Forced Pooling
8. Alternative site evaluation

We can see these rule making efforts taking a matter of months if honestly pursued, for some can be done rather quickly, like bonding and financial assurance rule making. We did not include interface with local governments as a rule making exercise. But the reaction in some cities such as Aurora is very disturbing. Their local government seems to think SB181 changed nothing. They believe they can proceed with permitting wells under criteria developed before 181 was passed and signed into law. Local governments need to be disabused of this belief in the strongest way possible. Delays in rule making will also allow them to catch up on their land use rights and police powers since home rule was restored to them under SB 181. The world changed with SB181, and we need to accept that as fact, and implement the law accordingly. It happened.

We have said previously that rule making on the 500 series is hopelessly out of sequence. It is way down the list of critical decisions as our rulemaking hierarchy shows. We wonder what criteria hearing officers and administrative law judges will be using when there are no rules on which to make decisions and resolve conflict. Do they make it up as they go along? Such a prospect is unfair to them and us.

Still, we agree with the Sierra Club in its call for higher penalty assessments under Series 500. We would add that refunds to offenders after they fix a leak or spill should be all but eliminated. This practice does not encourage best practices. It apologizes for mistakes. Moreover, we think a more or less hard rule should be adopted so that chronic repeat offenders lose their social license to operate in the state. Notice is thereby given to those who by their actions and inattention show disdain for our place on the planet.

Thank you for the opportunity to participate.

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